

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ASSOCIATED INDUSTRIES INSURANCE) Case No. _____
COMPANY, INC., a Florida corporation,)
)
 Plaintiff,) COMPLAINT FOR DECLARA
) RELIEF
 v.)
) JURY DEMAND
H. YORK ENTERPRISES, L.L.C. a)
Washington limited liability company;)
MITIGATION MASTERS, LLC, a)
Washington limited liability company dba)
SERVPRO of Tacoma; and SOPHIE)
MAXINE N. McCALLUM, an individual;)
and MONIKA C. VON LINTEL, an)
individual,)
)
 Defendants.)
)

For its Complaint against defendants H. York Enterprises, L.L.C. (“York”), Mitigation Masters, LLC, dba SERVPRO of Tacoma (“Mitigation Masters”) and Sophie Maxine N. McCallum (“McCallum”), and Monika C. Von Lintel (“Von Lintel”), plaintiff Associated Industries Insurance Company, Inc. (“Associated Industries”) alleges as follows:

Parties

1. Associated Industries is an insurance company organized under the laws of the State of Florida with its principal place of business in Boca Raton, Florida.

2. York is a limited liability company organized under the laws of the State of Washington and is licensed to do business as a general contractor in the State of Washington. Based on information and belief York's member is a citizen of the State of Washington.

3. Mitigation Masters is a limited liability company organized under the laws of the State of Washington and is licensed to do business as a general contractor in the State of Washington. Based on information and belief, the members of Mitigation Masters are citizens of State of Washington.

4. McCallum is a citizen of the State of Washington and is a co-owner of the real property located at 521 N. Yakima, in Tacoma, Washington, in Pierce County ("Property"). Based on information and belief, McCallum resides in Pierce County, Washington.

5. Von Lintel is a citizen of the State of Washington and is the other co-owner of the Property. Based on information and belief, Von Lintel resides in Pierce County, Washington.

Jurisdiction and Venue

6. This Court has jurisdiction under 28 U.S.C. § 1332 in that complete diversity exists between Associated Industries, on the one hand, and York, Mitigation Masters, McCallum and Von Lintel, on the other, and the amount in controversy exceeds \$75,000.

7. An actual controversy exists between the parties regarding Associated Industries' obligations under a liability insurance policy that it issued to York, with respect to a suit brought against York by McCallum and with respect to another suit brought against York, McCallum, and Von Lintel, by Mitigation Masters. Under 28 U.S.C. § 2201, Associated Industries is entitled to declaratory relief from this Court regarding those obligations.

8. Under 28 U.S.C. § 1391, venue is proper in this judicial district as York, Mitigation Masters, McCallum, and Von Lintel reside in this district. In addition, this action involves a dispute regarding the availability of insurance coverage for damages that allegedly arise from this judicial district.

Background

9. Associated Industries issued to York a commercial lines policy of insurance number AES1050996 01 (“Policy”), which was effective from February 23, 2019 to February 23, 2020. A copy of the Policy is attached as Exhibit 1.

1 10. McCallum filed an action against York in the Superior Court for the State of
2 Washington, in and for the County of Pierce, Case No. 20-2-04422-4 (the “McCallum Action”).
3 A copy of the Complaint in the McCallum Action is attached as Exhibit 2, and incorporated by
4 reference.

5 11. McCallum alleges in the McCallum Action that on approximately September 12,
6 2018, she entered into a time and materials contract with York to renovate the residence located
7 on the Property (“Residence”), and then on January 29, 2019, entered into a Remodeling
8 Contract with York to complete the renovations for the lump sum of \$1,052,631.75, among other
9 payment terms. She alleges that on May 29, 2019, while York was still working on the
10 Residence, the City of Tacoma turned off water in the area of the Residence in order to conduct
11 repairs. She further alleges that before leaving that night, York failed to insure that all water
12 fixtures or the main supply line were in the “off” position and that a fixture controlling the flow
13 of water to the bathtub faucet in the Master Bathroom was left in the “on” position. She then
14 alleges that water began pouring out of bathtub faucet once water service was restored, and that
15 because the bathtub was covered with a drop cloth, the water could not reach the bathtub drain.
16 She alleges that as a result, the Residence sustained catastrophic and substantial water damage
17 and that the estimated cost to repair the basement ballroom in the Residence exceeded \$400,000.
18 McCallum alleges that on July 22, 2019, York abandoned the project without remedying all of
19 the water damage. According to McCallum, York has filed mechanic’s liens against the
20 Residence as has ServPro, the subcontractor hired by York to dry out the Residence.

21 12. For McCallum’s first cause of action against York, Breach of Contract-
22 Abandonment, McCallum alleges that York abandoned its performance under the contract prior
23 to completing its scope of work. For McCallum’s second cause of action, Breach of Contract-
24 Breach of Standard of Care, McCallum alleges that York failed to exercise reasonable care in the
25 performance of its contract work by either failing to shut off the Residence’s main water supply
26 line or ensuring that all water fixtures in the Residence were in the “off” position when it

1 finished work and left the Residence on May 29, 2019. For McCallum's third cause of action,
2 Negligence, McCallum alleges that York breached its duty of reasonable care by failing to secure
3 and shut off all faucets and plumbing fixtures before leaving the premises in light of the City of
4 Tacoma's temporary water shut-off. For McCallum's fourth cause of action, Breach of
5 Warranty, McCallum alleges that York has breached its implied and express warranties to
6 McCallum by failing to perform necessary remedial activities to adequately and completely
7 correct deficiencies as it abandoned the job. For McCallum's fifth cause of action, Declaratory
8 Judgment-Invalidity of York Mechanic's Lien, McCallum alleges that York filed mechanic's
9 liens against the Residence to which York are not entitled and are, therefore, invalid. For
10 McCallum's sixth and final cause of action, Indemnity, McCallum alleges that York owes
11 McCallum a duty of indemnity related to York's failure to pay ServPro and the ServPro
12 mechanic's lien against the Residence.

13. McCallum seeks damages to property in an amount no less than \$400,000, the
14 exact amount to be proven at the time of trial, in the McCallum Action.

15. Mitigation Masters filed an action against York, McCallum and Von Lintel in the
16 Superior Court for the State of Washington, in and for the County of Pierce, Case No. 20-2-
17 04951-0 (the "Mitigation Masters Action"). A copy of the Complaint in the Mitigation Masters
18 Action is attached as Exhibit 3, and incorporated by reference.

19. Mitigation Masters alleges in the Mitigation Masters Action that on May 30,
20 2019, it entered into a contract with York to perform water remediation and restoration services
21 at the Residence. Mitigation Masters further alleges that on August 2, 2019, it sent York an
22 invoice for all its services rendered at the Residence totaling \$104,034.10, out of which that York
23 has paid \$25,000, leaving \$79,034.01 outstanding. Mitigation Masters also alleges that it
24 recorded a Claim of Lien on October 1, 2019.

25. For Mitigation Masters first cause of action in the Mitigation Masters Action,
26 Breach of Contract against York, Mitigation Masters alleges York breached their agreement by

1 failing to pay Mitigation Masters the balance owing for Mitigation Masters's services provided
2 under that agreement, in the amount of \$79,034.01. For Mitigation Masters second cause of
3 action, Mitigation Masters alleges that it is entitled to an order of foreclosure and sale of the
4 Residence, with the net proceed of the sale applied to amounts due and owing to Mitigation Masters
5 for services it performed at the Residence. Mitigation Masters alleges that it has been damaged and
6 is entitled to its damages in the amount of \$79,034.01 plus contractual late fees and attorneys'
7 fees.

8 17. Mitigation Masters seeks in the Mitigation Masters Action judgment against York
9 in an amount to be proven at trial, but at least \$79,034.01.

10 18. York tendered the McCallum and Mitigation Master Actions to Associated
11 Industries for defense and indemnity. Associated Industries acknowledged receipt of the tenders,
12 investigated the tenders under a full and complete reservation of rights, and has retained counsel
13 to defend York in the McCallum Action. Associated Industries seeks a declaration as to its
14 duties, under the Policy, to defend and indemnify York in the McCallum and Mitigation Master
15 Actions.

16 **FIRST CLAIM FOR RELIEF**

17 **(Declaratory Relief under 28 U.S.C.¶ § 2201 against
18 York and McCallum)**

19 19. Associated Industries incorporates by reference herein the allegations set forth in
20 paragraphs 1 through 18 above.

21 20. A present and actual controversy exists between Associated Industries, York and
22 McCallum regarding the respective rights of Associated Industries and York under the Policy,
23 and Associated Industries' obligations, if any, to defend and indemnify York in the McCallum
24 Action.

25 21. Pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. § 2201, Associated Industries seeks
26 and is entitled to a declaration of the rights of Associated Industries and York under the Policy,

1 in relation to the McCallum Action.

2 22. Associated Industries seeks a legal determination and declaration that it has no
3 duty to defend or indemnify York under the terms, conditions, exclusions and endorsements
4 contained in the Policy, and pursuant to law, in relation to the McCallum Action.

5 23. A declaratory judgment is both necessary and proper at this time and does not
6 prejudice York in the McCallum Action. Such a declaration is necessary and appropriate in order
7 for Associated Industries and York to ascertain their respective rights and duties under the
8 Policy.

9 **SECOND CLAIM FOR RELIEF**

10 **(Declaratory Relief under 28 U.S.C.¶ § 2201 against 11 York, Mitigation Masters, McCallum, and Von Lintel)**

12 24. Associated Industries incorporates by reference herein the allegations set forth in
13 paragraphs 1 through 23 above.

14 25. A present and actual controversy exists between Associated Industries, York
15 Mitigation Masters, McCallum, and Von Lintel regarding the respective rights of Associated
16 Industries and York under the Policy, and Associated Industries' obligations, if any, to defend
17 and indemnify York in the Mitigation Masters Action.

18 26. Pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. § 2201, Associated Industries seeks
19 and is entitled to a declaration of the rights of Associated Industries and York under the Policy,
20 in relation to the Mitigation Masters Action.

21 27. Associated Industries seeks a legal determination and declaration that it has no
22 duty to defend or indemnify York under the terms, conditions, exclusions and endorsements
23 contained in the Policy, and pursuant to law, in relation to the Mitigation Masters Action.

24 28. A declaratory judgment is both necessary and proper at this time and does not
25 prejudice York in the Mitigation Masters Action. Such a declaration is necessary and appropriate
26 in order for Associated Industries and York to ascertain their respective rights and duties under

1 the Policy.

2 **DEMAND FOR JUDGMENT**

3 Therefore, Associated Industries demands that judgment be entered declaring that
4 Associated Industries does not owe any duty to defend or indemnify York against the claims
5 asserted in the McCallum and Mitigation Masters Action, awarding Associated Industries its
6 costs and expenses incurred in this Action, and any other relief the Court deems appropriate.

7 DATED: August 28, 2020

8 Respectfully submitted,

9 GILBERT | LEVY | BENNETT

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14 Industries Insurance Company, Inc.